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GENERAL COUNSEL'S OPINION NUMBER 58-5, DATED 20 AUGUST 1958

(1) When travel of an employee proceeding on assignment abroad with his dependents is interrupted by illness of one or more dependents, there is no legal objection to payment of per diem for the period of delay, for both employee and dependents.

(2) The period of delay may be counted as travel time and not as leave for the employee.

TO DIRECTOR OF PERSONNEL

1. By memorandum of 30 July 1958, you posed hypothetical questions regarding entitlement to per diem of employee and dependents with respect to the leave status of an employee proceeding on assignment abroad, the whole family being forced to delay or interrupt travel en route because of the illness of an accompanying dependent.

2. As is indicated in your memorandum, there appear to be no published decisions of the Comptroller General bearing directly on the points you raise. There is, however, an unpublished decision which is helpful with respect to per diem of dependents. This is decision B-117004, dated 5 November 1953, involving an officer of the Department of Agriculture. His travel occurred in connection with the Point IV Program under which personnel traveling overseas are permitted to receive allowances and benefits not in excess of those established under the Foreign Service Act of 1946. The individual was traveling from the United States [] when one of his two young daughters became seriously ill [] necessitating a travel delay of some 12 days prior to reaching the ultimate destination in that country. In permitting the payment of per diem for the dependents in connection with the delay the Comptroller General stated:

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". . . Section 911 of the Foreign Service Act provides, in part, that the Secretary of State may, under such regulations as he shall prescribe, pay the travel expenses of the members of the family of an officer or employee of the Service when proceeding to his post of duty.

"While no provision of the Foreign Service Travel Regulations - understood to have been adopted for travel of your Point IV personnel - in effect during the period involved appears to authorize allowance of the reclaim, you are advised that as the delay was not for personal convenience, but occasioned by matters beyond the control of the individuals concerned, this Office would not be required to object to the certification for payment of the voucher if administratively approved pursuant to section 103.696 of the Foreign Service Regulations, effective July 1, 1947, which permits the authorization or approval of emergency, unusual, or additional payments, if allowable under existing authority, whether or not specifically provided for by the said regulations." (This emergency power is now to be found in 180 Foreign Service Travel Regulations 2.26.)

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The language of the Foreign Service Act referred to, i.e., section 911(2)

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The Agency Regulations do not contain a provision similar to that of the Foreign Service Regulations referred to in the Comptroller General's decision,

[Redacted] [Redacted]

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Accordingly, we would have no legal objection to payment of the per diem of the dependents if administratively approved.

3. With regard to the employee himself, Agency [Redacted] STATINTL paragraph 4a(4) provided that per diem shall be allowed for periods of delay or interruption en route when caused by circumstances beyond the control of the traveler. Although [Redacted] STATINTL stated that it rescinded [Redacted] paragraph 4, we are advised that pursuant to the STATINTL Comptroller's request [Redacted] paragraph 4a(4), is to be re- STATINTL published as part of [Redacted]. This was inadvertently STATINTL omitted but the oversight is to be corrected in the near future. In the STATOTHR meantime, we are advised that the Comptroller considers [Redacted] STATINTL [Redacted] paragraph 4a(4), to be currently effective. [Redacted]

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[Redacted] we would, therefore, have no legal objection to payment of per diem of the employee in connection with the travel delay in question, if administratively approved.

4. With respect to the leave status of an employee in the situation under consideration, we are advised that the Comptroller General has refrained from issuing an opinion inasmuch as it has been considered preferable to treat the problem as one for internal administration. In other words, any illness which a dependent might incur as a result of travel to the foreign duty station is generally considered to be a hazard of travel and a risk of delay which the Government undertakes in connection with sending officers and employees and their families to foreign posts of duty. Accordingly, where delay in completion of travel of an officer or employee to a post abroad is caused by illness of a dependent, such delay being not for personal convenience but occasioned by circumstances beyond the control of the individuals concerned,

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there is no legal objection to treating such delay as a necessary part of travel time and not as leave. However, in the interests of orderly administration and in order to comply with General Accounting Office standards, we feel that for such delay to be treated as a part of travel time, it would be desirable to have an administrative approval by the appropriate official.

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